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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,155	03/17/2004	Thomas P. Bishop	VIEO1290	6500
34456	7590	10/06/2006	EXAMINER	
LARSON NEWMAN ABEL POLANSKY & WHITE, LLP 5914 WEST COURTYARD DRIVE SUITE 200 AUSTIN, TX 78730			RAYYAN, SUSAN F	
		ART UNIT	PAPER NUMBER	
		2167		

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/803,155	BISHOP ET AL.	
	Examiner Susan F. Rayyan	Art Unit 2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 3/17/2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 and 38-42 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 and 24-37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09152005, 2/11/05, 3/17/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, 24-37 drawn to "examining the communication to obtain a characteristic of the application infrastructure component", classified in class 707, subclass 3.
 - II. Claims 18-23, 38-42, drawn to "collecting data regarding one or more devices..." and "assembling information on an application infrastructure topology from the collected information", classified in 707, subclass 102.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as "examining the communication to obtain a characteristic of the application infrastructure component", subcombination II has a separate utility such as "collecting data regarding one or more devices..." and "assembling information on an application infrastructure topology from the collected information", See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for group I is not required for group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes is proper.

A telephone call was made to Mr. George Meyer, Registration Number 35,284 on September 29, 2006 to request an oral election to the above restriction requirement. Applicant elected Group I, with traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

2. Claims 1-17, 24-37 are pending.
3. Claims 18-23, 38-42 are withdrawn.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,8 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 837 578 A2 issued to Robert A. Flavin et al (“Flavin”).

As per claim 1 Flavin anticipates:

receiving a communication pertaining to the application infrastructure component and examining the communication to obtain a characteristic of the application infrastructure component (column 4, lines 17-19, accessing polled amount, column 4, lines 31-37, as amount of network sent usage);
and forwarding the communication (column 4, lines 43-45, received poll).

As per claim 2, same as claim argument above and Flavin anticipates:

wherein the communication is intended for the application infrastructure component and the communication is forwarded to the application infrastructure component (column 4, lines 43-45).

As per claim 3 same as claim argument above and Flavin anticipates:
wherein the communication originates with the application infrastructure component and
the communication is forwarded to an intended recipient (column 2, lines 45-56).

Claim 8 is rejected based on the same rationale as claim 1.

Claims 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,651,006 issued to Shuji Fujino et al ("Fujino").

As per claim 9 Fujino anticipates:

receiving a first request for an application infrastructure component and collecting data on the application infrastructure component, wherein collecting data further comprises sending a second request to the application infrastructure component and receiving a response to the second request from the application infrastructure component (column 2, lines 60 to column 3, line 5 at a reference request collected information is posted to the integration manager).

As per claim 10, same as claim arguments above and Fujino anticipates:

further comprising forwarding the first request to the application infrastructure component and receiving a response to the first request from the application

infrastructure component (column 3, lines 14-18, collected information is sent to the integration manager through a communication protocol) .

As per claim 11, same as claim arguments above and Fujino anticipates:

further comprising receiving a third request for an application infrastructure component, forwarding the third request to the application infrastructure component, receiving a response to the third request from the application infrastructure component and forwarding the response to the third request to the intended recipient (column 2, lines 60-65, SNMP is used as the communication protocol between the agent, sub-manager and integration manager and column 3, line 1-20) .

As per claim 12, same as claim arguments above and Fujino anticipates:

wherein the first request is different from the second request (column 2, lines 60 to column 3, line 5 at a reference request collected information is posted to the integration manager.

As per claim 13, same as claim arguments above and Fujino anticipates:

wherein the first request and the third request are substantially identical connection requests (Figure 30 and column 11, lines 10-15).

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As per claim 14, same as claim arguments above and Fujino anticipates:

wherein the first response and the third response are substantially identical connect-ok responses (Figure 30 and column 11, lines 10-15).

As per claim 15, same as claim arguments above and Fujino anticipates:

wherein collecting data on the application infrastructure component further comprises querying an agent residing on the application infrastructure component (column 3, lines 15-16, collecting management objects through an agent).

As per claim 16, same as claim arguments above and Fujino anticipates:

wherein the data regarding the application infrastructure component includes at least one of operating system information, network information, information on the application infrastructure component's CPU utilization, file system information, hardware information, and application information (column 3, lines 13-18).

Claim 17 is rejected based on the same rationale as claim 9.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 837 578 A2 issued to Robert A. Flavin et al (“Flavin”) in view of US Patent 6,651,099 issued to Russell S. Dietz et al (“Dietz”).

As per claim 4 same as claim arguments above and Flavin does not explicitly teach wherein the communication is a packet adhering to the OSI reference model (column 9, lines 28-57, OSI model). Dietz does teach OSI reference model to establish and maintain communication. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Flavin with the communication is a packet adhering to the OSI reference model to establish and maintain communication (column 9, lines 12-15).

As per claim 5 same as claim arguments above and Dietz teaches:

wherein the packet is a TCP/IP packet (column 9, lines 12-27, TCP/IP packets).

As per claim 6 same as claim arguments above and Dietz teaches:

wherein examining the communication further comprises examining layers 2, 3, 4, or 7 of the TCP/IP packet (column 9, lines 35-50, OSI layers).

As per claim 7 same as claim argument above and Flavin teaches:

wherein the data regarding the application infrastructure component includes at least one of operating system information, network information, the application infrastructure component's CPU utilization, file system information, application information, and hardware information (column 4, lines 31-37, as amount of network sent usage).

6. **Claims 24-29** are rejected based on the same rationale as claims 1,3-7.

7. **Claims 30-37** are rejected based on the same rationale as claims 9-16.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Rayyan whose telephone number is (571) 272-1675. The examiner can normally be reached M-F: 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan Rayyan
Susan Rayyan

October 1, 2006



JOHN COTTINGHAM
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